

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

SECOND APPEAL No.1489 of 2017

JUDGMENT:

This appeal is filed under Section 100 of CPC, by the plaintiffs, assailing the decree and judgment dated 10.10.2017 in A.S.No.40 of 2008 on the file of the Court of II Additional District Judge, Kadapa at Proddatur, wherein and whereby the decree and judgment dated 28.8.2007 in O.S.No.96 of 2002 on the file of the Court of Senior Civil Judge, Proddatur, decreeing the suit for declaration, was set aside and remanded to the trial Court for fresh disposal.

2. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed in the suit.

3. The plaintiffs filed O.S.No.96 of 2002 against the defendants seeking declaration that the first plaintiff is the legally wedded wife of late S.Arlappa and that the plaintiffs are entitled for the retrial benefits of late S.Arlappa. The first defendant filed written statement contending that she is the legally wedded wife of late S.Arlappa and she begotten children through him, who are necessary and proper parties to the suit. Basing on the pleadings, the trial Court framed the following issues:

- 1) Whether late Arlappa retired from service on the ground of medical invalidation is true and binding on the defendants?

2) Whether the plaintiff entitled for retirement benefits of deceased Arlappa?

3) To what relief?

4. During the course of trial, on behalf of the plaintiffs, P.Ws.1 and 2 were examined and Exs.A.1 to A.15 were marked. On behalf of the defendants, D.Ws.1 to 3 were examined and Exs.B1 to B3 were marked.

5. After considering the oral, documentary evidence and other material available on record, the trial Court decreed the suit declaring the first plaintiff as the legally wedded wife of deceased Arlappa and plaintiff Nos.1 to 3 are entitled for equal shares in the death-cum-retirement benefits of the deceased Arlappa. Feeling aggrieved by the judgment and decree in O.S.No.96 of 2002, the first defendant preferred A.S.No.40 of 2008. The appellate Court, after reappraising the oral and documentary evidence available on the record, without being influenced by the findings of the trial Court, arrived at a conclusion that the trial Court has not given specific finding on each and every issue recasted by it, and remanded the suit to the trial Court for fresh disposal. Aggrieved by the judgment and decree of the appellate Court, the plaintiffs preferred the second appeal.

6. Heard the learned counsel for the appellants-plaintiffs and perused the material available on record.

7. It is not in dispute that the plaintiffs filed the suit to declare first plaintiff as legally wedded wife of late Arlappa and she along with plaintiff Nos.2 and 3 are entitled for death-cum-retiral benefits of late Arlappa. After full-fledged trial, the suit was decreed in favour of plaintiffs. It is needless to say that in a suit for declaration, the plaintiff may succeed or fail basing on the strength or weakness of his or her case. The Court cannot grant relief of declaration basing on the laches or lacunae, if any, on the part of the defendant. In the instant case, the trial Court ought to have framed the issue, “*whether the first plaintiff is the legally wedded wife of Arlappa?*”. This Court is unable to understand how the trial Court decreed the suit without framing proper issues.

8. A perusal of paragraph No.14 of the judgment of appellate Court reveals that during the pendency of the suit, the trial Court recasted the issues on 12.7.2005. The fact remains that the trial Court has not given any finding much less specific on each and every issue recasted. It is a settled principle of law that the Court has to give a specific finding on each and every issue. A perusal of the record reveals that the trial Court lost sight of the recasted issues and gave finding on the earlier issues. The appellate Court, after considering the material available on record, came to the conclusion that the trial Court has not decided the *lis* involved in the suit in accordance with settled principles of law. When the first plaintiff and the first defendant are claiming to be the legally wedded wife of late

S.Arlappa, the trial Court has to give specific finding on that aspect. The appellate Court, taking into consideration the material available on record, came to the conclusion that it is a fit case to remand the matter to the trial Court for disposal in accordance with law. While remanding the matter to the trial Court, the appellate Court framed the following issues, which are relevant for proper disposal of the suit.

- 1) Whether the 1st plaintiff is the legally wedded wife of late S.Arlappa or not?
- 2) Whether the plaintiffs 2 and 3 are legitimate children of S.Arlappa and plaintiffs 1 to 3 are entitled to retirement-cum-death benefits of deceased S.Arlappa or not?
- 3) Whether the children of 1st defendant are necessary parties and that the suit is bad for non-joinder or not?
- 4) Whether the Registered Will dated:8.8.1994 is true, valid and binding or not?
- 5) To what result?

9. The appeal is continuation of the suit. A duty is cast on the appellate Court to see whether the trial Court has framed the proper issues or not, in order to resolve the *lis* involved in the suit. If proper issues are not framed, the findings recorded by the trial Court are not sustainable. If the judgment and decree of the trial Court is allowed to stand, certainly it would amount to miscarriage of justice. I am fully agreeing with the finding recorded by the appellate Court that it is a fit case to remand the matter to the trial Court for fresh disposal in

accordance with the issues framed by the appellate Court. There is no question of law much less substantial question of law that arise in this appeal. Hence, the appeal is liable to be dismissed.

10. In the result, the second appeal is dismissed. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

April 13, 2018
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